

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GETTY PETROLEUM MARKETING INC.,

08 CV 6176 (JGK)

Plaintiff,

-against-

NEW ATLANTIS ACQUISITION I LLC,
ATLANTIS PETROLEUM, LLC, and FIRST
AMERICAN TITLE INSURANCE
COMPANY,

Defendants.

STATE OF NEW YORK)
)
 ss.:
COUNTY OF NEW YORK)

**AFFIDAVIT OF
JASON TARBART,
SENIOR VICE PRESIDENT,
EAST COAST,
BCP MANAGEMENT, INC.,
IN SUPPORT OF MOTION
TO DISMISS COMPLAINT**

JASON TARBART, being duly sworn, deposes and says:

1. I am Senior Vice President, East Coast, for BCP Management, Inc. (“BCP”), located at 75 Rockefeller Plaza, 18th Floor, New York, NY 10019.
2. As alleged in the Complaint, Defendant New Atlantis Acquisition I LLC (“New Atlantis”) is essentially a joint venture between Defendant Atlantis Petroleum, LLC (“Atlantis”) and BCP. As such, I am familiar with the facts and circumstances set forth below.
3. I submit this affidavit in support of Defendants’ Motion to Dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).
4. New Atlantis is a limited liability company with two (2) members – Atlantis and BCP-Atlantis I LLC (“BCP-Atlantis I”).
5. Atlantis is a single member limited liability company, its lone member being Kenneth C. Morrison, President and CEO of Atlantis. Kenneth C. Morrison is a citizen and resident of the State of Pennsylvania. Atlantis, in turn, is a citizen of Pennsylvania.

6. BCP-Atlantis I is a limited liability company. BCP-Atlantis I has, at the present time, only one (1) member – BCP II, LP (“BCP II”).

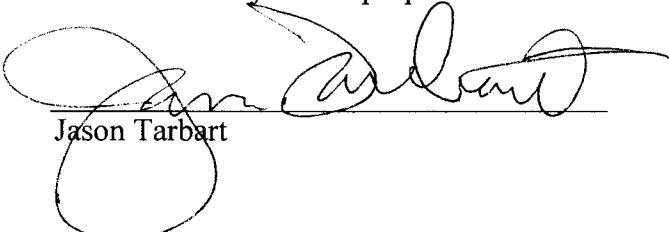
7. BCP II is a limited partnership consisting of eighteen (18) partners.

8. One of BCP II’s partners is Michael Mazzei, a citizen of the State of New York with a residence of 345 Manhasset Woods Road, Manhasset, NY 11030.

9. As such, BCP II is a citizen of the State of New York.

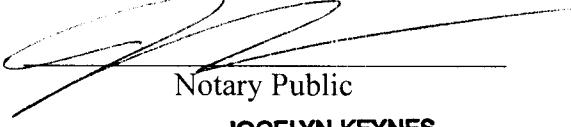
10. Because BCP II is a citizen of the State of New York, both BCP-Atlantis I and New Atlantis are citizens of the State of New York.

WHEREFORE, Defendants respectfully request that the Court grant Defendants’ motion to dismiss, together with such other relief as this Court deems just and proper.



Jason Tarbart

Sworn to before me this
31 day of July 2008



Notary Public

JOCELYN KEYNES
Notary Public, State of New York
No. 02KE6039345
Qualified in New York County
Commission Expires 5/25/2010

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**ATTORNEY'S AFFIRMATION
OF SERVICE**

NEW ATLANTIS ACQUISITION I LLC,
ATLANTIS PETROLEUM, LLC, and FIRST
AMERICAN TITLE INSURANCE
COMPANY,

Defendants.

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BRADLEY L. MITCHELL, an attorney admitted to practice in the Southern District of New York and a member of the law firm of Stevens & Lee, counsel for Defendants New Atlantis Acquisition I LLC and Atlantis Petroleum, LLC ("Moving Defendants"), affirms as follows:

1. I am over the age of eighteen years and not a party to this action.
2. That on the 31st day of July, 2008, the Affidavit of Jason Tarbart, Senior Vice President, East Coast, BCP Management, Inc., in Support of Motion to Dismiss Complaint was served upon the following counsel of record via the ECF filing system maintained by the Southern District of New York, and via Federal Express next business day delivery, addressed as follows, said address being the last address identified by this counsel in papers filed in connection with this action:

Robert A. Johnson, Esq.
Christopher T. Schulten, Esq.
AKIN GUMP STRAUSS HAUER & FELD LLP
590 Madison Avenue
New York, New York 10022
(212) 872-1000
Attorneys for Plaintiff

Dated: July 31, 2008

s/ Bradley L. Mitchell

Bradley L. Mitchell